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UNCLAS SECTION 01 OF 02 PRETORIA 005555

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SUBJECT: REGULATOR PROPOSES TELECOM REGULATIONS FOR VANS

REFTEL: A) PRETORIA 04028

(U) Sensitive but unclassified. Not for Internet distribution.

11. (U) SUMMARY. A series of Ministerial decisions to liberalize South Africa's telecommunications sector by February 2005 led to an industry-wide colloquium to discuss the intent behind the determinations. The Independent Communications Authority of South Africa (ICASA) considered feedback from the colloquium in releasing proposed regulations for value-added network service (VANS) providers. The proposed VANS regulations would allow self-provisioning, the resale of spare capacity, voice over Internet Protocol, and access to standard telecommunications numbering. The regulations also propose that VANS sell 30 percent of their firms to historically disadvantaged individuals (HDIs). Public comments on the proposed regulations may be submitted until January 7, 2005. END SUMMARY.

BACKGROUND

12. (U) In September 2004, Minister of Communications Ivy Matsepe-Casaburri announced a series of policy decisions to liberalize South Africa's telecommunications sector by February 2005. In addition to removing a number of legislative restrictions and requirements placed on various operators and service providers, the measures ("Ministerial Determinations") are intended to facilitate growth and competition in the communications sector; create greater choice for operators and service providers in acquiring facilities and managing spare capacity on their networks; liberalise the public payphone market segment and enhance Internet connectivity in schools and tertiary educations across South Africa by mandating a discounted fee for service and connectivity.

13. (U) In October 2004, the Independent Communications Authority of South Africa (ICASA) hosted a two-day public colloquium to solicit industry feedback on the Minister's determinations. Entrenched industry players such as Sentech and Telkom argued that it was a misinterpretation of the Ministerial Determinations to say that VANS would be allowed to self-provide their own infrastructure. Others from the industry said that the Minister made the announcement in the context of promoting greater competition and liberalization within the telecommunication sector. Consequently, they said, the determinations should be interpreted in the most liberal way possible.

14. (SBU) Following the colloquium, a senior ICASA official told Econoff that the regulator intended to interpret the Ministerial Determinations in the most liberal way possible within the framework of the Telecommunications Act. He also said that the Determinations highlighted the need for well-developed interconnection agreements and numbering plans and that ICASA would be working on those as well.

PROPOSED VANS REGULATIONS - SELF PROVISION, EMPOWERMENT

15. (SBU) In somewhat ambiguous language, the regulations propose to allow VANS to self-provide their own facilities. A senior ICASA official told Econoff that the regulations' definition for "self-provision" means: a) VANS can purchase approved telecommunications equipment from a registered equipment supplier to build their own infrastructure; OR b) VANS can procure their facilities from a telecommunications service licensee including mobile operators, private telecommunications network providers (e.g., Transnet, Eskom), other VANS with spare capacity, Telkom, the Second National Operator (SNO), and potentially Sentech.

16. (SBU) Econoff also questioned the official about proposed empowerment targets in the regulations. The

official responded that ICASA's mandate includes evaluating potential licensees on their inclusion of historically disadvantaged individuals (HDIs). Econoff suggested that the regulator defer to industry empowerment targets and Department of Trade & Industry (DTI) Codes of Good Practice to prevent potential conflicts. For example, it's conceivable that a VAN is awarded an exemption from the equity ownership requirement by its industry Charter council only to find that the regulator requires it to have 30 percent in the hands of HDIs. It's reasonable that in such a case, DTI-approved industry charters would prevail given DTI's legislative mandate over all things pertaining to black economic empowerment (BEE).

17. (U) Another point of concern is a proposed increase in the application fee from R6000 (\$1000) to R30,000 (\$5000). Critics say the proposed hike in the application fee creates an added barrier to entry for smaller players, limiting competition. Andries Matthysen, ICASA's senior manager for licensing enforcement, numbering and administration, says, however, that the recommended increase in the application fee is justified because of the proposed new license rights for VANS such as carrying voice over Internet Protocol, self-provisioning, reselling spare capacity, and access to standard telecommunications numbering (allowing VANS to interconnect with the Telkom network).

18. (U) A copy of the proposed regulations will be emailed to AF/S.

FRAZER